IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1198 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Appellant(s)
Versus
JIVANBHAI B PATEL & 2 - Defendant(s)

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Appearance :
MR HEMANT S SHAH for Appellant(s) : 1,
MR BHARGAV N BHATT for Defendant(s) : 1 - 2.
None for Defendant(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 23/08/2006

ORAL JUDGMENT

1. By way of this appeal the appellant G.S.R.T.C. has challenged the judgement and award dated 29.04.1994 passed by the Motor Accident Claims Tribunal, Bhavnagar, in Motor Accident Claims Petition No. 236 of 1985 whereby the same was partly allowed.

2. The short facts of the case are that on 23.02.1985 the son of the original applicant was going on his bicycle. At that time S.T. bus bearing

Registration No. G.R.R. 9064 came and knocked down the applicant's son as a result of which he died. Therefore the parents of the son filed aforesaid claim petition claiming Rs. 1,00,000/- by way of compensation. Tribunal after hearing the parties passed the aforesaid order.

3. Learned advocate for the appellant has submitted that the Tribunal has erred in awarding Rs. 5,000/- towards pain, shock and suffering, Rs. 1,000/- towards conveyance expenses and damage to the cycle. He further submitted that the Tribunal has erred in awarding Rs. 3,000/- towards funeral expenses and also in awarding Rs. 72,000/- for dependency loss.

4. Heard learned Advocates for the respective parties. From the evidence at Exh. 31, the school leaving certificate of the deceased it is clearly revealed that he was minor. The postmortem report at Ex. 30 clearly shows that the death was due to the accident. The deceased was a minor boy and had the whole life before him. In this context, it would be relevant to refer to a Division Bench decision of this Court in the case of **Ranchhodbhai Somabhai v. Babubhai Bhailalbhai** reported in **1982 G.L.H. pg. 28** wherein, it has been held that two

third of the datum figure would be diverted by the deceased for the maintenance of his own family and one third for the maintenance of his parents. Similar principle has been laid down in a subsequent decision of this Court in the case of **Smt. Rafia Sultan Widow of Mirsa Sultan Alil v. Oil and Natural Gas Commission** reported in **1985 (2) G.L.R. pg. 1315**.

5. In the case on hand, the Tribunal has arrived at a figure of Rs. 72,000/- . The said figure has been arrived at by taking the monetary dependency of the parents to be Rs. 400/- and by granting a multiplier of 15 years. Looking to the facts and circumstances of the case and keeping in mind the age of the deceased, I am of the view that the Tribunal has wrongly arrived at the datum figure of Rs. 72,000/-. The Tribunal ought to have considered Rs. 200/- as the monthly dependency of the parents in which case the yearly income would come to Rs. 2400/- and by taking multiplier of 15 the amount under future loss of dependency would come to Rs. 36,000/- ***(Rs. 2400 X 15 = Rs. 36,000).***

5.1 The compensation awarded under the different heads are not disturbed. In that view of the matter, the original appellants shall be entitled to Rs. 5,000/- by

way of pain, shock and suffering, Rs. 1,000/- towards transportation, Rs. 3000/- towards funeral expenses and Rs. 36,000/- towards future dependency thereby totalling to an amount of Rs. 45,000/-.

6. In the premises aforesaid the original applicants would be entitled to total sum of ***Rs. 45,000/-*** by way of compensation. The remaining amount shall be refunded to the appellant Corporation. The award of the Tribunal is modified accordingly. No order as to costs.

(K. S. JHAVERI,

J.)

Suresh*